

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Lex P. Jansen et al.	Art Unit	: 3731
Serial No.	: 10/063,125	Examiner	: Glenn K. Dawson
Filed	: March 22, 2002	Conf. No.	: 5949
Title	: MRI AND X-RAY COMPATIBLE STENT MATERIAL		

Mail Stop Appeal Brief - Patents

Commissioner for Patents
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REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Applicants respond to the Examiner's Answer as follows.

Applicants object to the Examiner's citation to WO 95/30384 in the Examiner's Answer at page 4, lines 15-23. This citation muddles the record because the WO 95/30384 reference was not used in any of the currently pending rejections. The Examiner alleges that "[t]his reference is merely cited here to rebut applicant's contention that materials' (sic) used would not have been known to necessarily be successful in a stent." Applicants never made such a broad argument. Applicants instead argued that there was nothing in the references used in the currently pending rejections to suggest that the specific alloys of Evans, Bryskin, or Rhenium Alloys would be successful in a stent as claimed, namely a stent including a tubular shaped body capable of maintaining patency of a blood vessel consisting essentially of the claimed alloy. The WO 95/30384 reference does not rebut this argument. Applicants believe that the Examiner's late citation to this reference is an improper and untimely attempt to issue a new rejection and that this attempt fails to comply with MPEP § 1207.03.

Moreover, the WO 95/30384 reference does not disclose or suggest, either alone or in combination with the other cited references, the currently pending claims. Each independent claim requires an expandable medical implant for implantation in a bodily vessel, the implant having:

- a flow passage therethrough,
- being in the form of a stent comprising a body having a generally tubular shape,
- the body capable of maintaining patency in a blood vessel,
- the body consisting essentially of an alloy comprising tungsten and rhenium.

The WO 95/30384 reference discloses a filament having a central core 24 and a case 26. Although WO 95/30384 does disclose the use of a tungsten/rhenium alloy in the core, it does not disclose a body consisting essentially of an alloy comprising tungsten and rhenium having a generally tubular shape and capable of maintaining patency in a blood vessel. This is because the filament of WO 95/30384 also includes a case 26 made of another "relatively resilient material, e.g. a cobalt/chromium based alloy." The core 24 of the filament of the WO 95/30384 reference is not itself a body having a generally tubular shape capable of maintaining patency in a blood vessel. Because the core 24 of WO 95/30384 is ductile and disclosed as being combined with a relatively resilient case 26, the WO 95/30384 reference would not give one having ordinary skill in the art any reason to modify the Fontaine stent to arrive at the claimed stent. The WO 95/30384 reference merely suggests that a ductile core material may be used to provide radiopacity, not that this ductile core material may be used to construct a tubular shaped body capable of maintaining the patency of a blood vessel.

On page 4, lines 9-14 of the Examiner's Answer, the Examiner argues that the Applicant's argument with regard to these material properties, such as MRI compatibility, is irrelevant because "[t]he motivation for using the particular materials need not be for the same exact reason as the applicant." Applicant, however, is not saying that the Examiner must use the same exact reason as the applicant, but that one having ordinary skill in the art of stent design, knowing that a stent must have a combination of properties other than just radiopacity, would not have found it obvious to use the specific alloys disclosed by Evans, Bryskin, or Rhenium Alloys to produce the stent as claimed because there is no indication in the cited references that these specific alloys have a desirable combination of material properties necessary and/or desired to construct a stent of the claimed structure. The Examiner's asserted motivation for combining the references is that "using [t]he specific alloy is one which [would] provide a stent with good radiopaque qualities." This motivation, however, suggests that the Examiner is not fully considering the Applicants' point. There is no indication in Evans, Bryskin, or Rhenium Alloys that the disclosed specific alloys would have a combination of desired and/or necessary material properties for a stent of the claimed structure. Furthermore, the Fontaine reference already discloses tantalum as a suitable radiopaque material for producing a stent, and none of the other

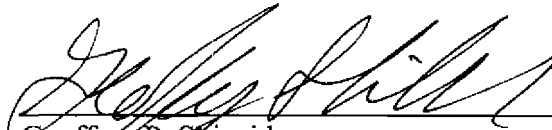
cited references disclose or suggest that the claimed alloy would have a better combination of material properties (e.g., flexibility, expandability, radiopacity, and MRI compatibility) for a stent of the claimed structure. There is no suggestion in Fontaine that any radiopaque material, irrespective of other material properties, should be used to form a stent having a tubular shaped body capable of maintaining patency in a blood vessel.

For these reasons, and the reasons stated in the Appeal Brief, Applicants submit that the final rejection should be reversed.

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Respectfully submitted,

Date: 6/13/2007



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